

AMAX CHEMICAL CORP.

IBLA 79-162

Decided February 6, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, holding potassium prospecting permit NM 24594 to have terminated by operation of law.

Affirmed.

1. Potassium Leases and Permits: Generally -- Potassium Leases and Permits: Permits

Failure to pay full annual rental on or before the anniversary date for a potassium prospecting permit results in automatic termination of the permit.

APPEARANCES: Charles A. Feezer, Esq., Dow & Feezer, P.A., Carlsbad, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Amax Chemical Corporation has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 18, 1978, holding appellant's potassium prospecting permit NM 24594 to have terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the permit. Appellant's permit was issued for a term of 2 years, effective November 1, 1977, at an annual rental of \$630.

On October 24, 1978, BLM received payment in the amount of \$100 from appellant. The remainder of the annual rental was received on December 1, 1978. In its statement of reasons for appeal appellant explains that it inadvertently wrote a check for \$100 as rent for the subject permit, having just written another check for \$100 as the correct rent for permit NM 24593, and that when the error was discovered the remainder of the rent was submitted. Appellant also argues that no other party is seeking to lease the land covered by the permit and that it has the existing facilities to carry out development of the potassium reserves on the land.

[1] The pertinent regulation, 43 CFR 3511.4-2(b), 1/ provides in part that "[a]ny prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit." The anniversary date of the permit was November 1, 1978. Payment was not received until December 1, 1978, well after the anniversary date. Inadvertence or mistake on the part of appellant does not justify failure to pay rental timely. The permit automatically terminated on November 2, 1978, since there is no provision of law or regulation which authorizes reinstatement of a potassium prospecting permit under these circumstances.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ This regulation dates from 1963 and is well established. Section 32 of the Mineral Leasing Act, 30 U.S.C. § 189 (1976), authorizes the Secretary of the Interior to prescribe necessary and proper rules and regulations and to do all things necessary to carry out and accomplish the purposes of Chapter 3A, Leases and Prospecting Permits, of Title 30 U.S.C. Specifically, Section 1 of the Act of February 7, 1927, 30 U.S.C. § 281 (1976), provides that the Secretary is authorized, under such rules and regulations as he may prescribe, to grant prospecting permits for potassium in lands belonging to the United States. Regulation 43 CFR 3511.4-2(b) (originally promulgated in Circular 2096 as 43 CFR 194.12(b)(1), 28 FR 1475 (Feb. 15, 1963)), was issued under the above cited authorities. Under 43 CFR 3511.4-2(b)(3), where a permit period expires by its own terms as this one did on October 31, 1979, the land therein became immediately available without any notation of the records required. We believe that 43 CFR 1821.2(g) is inapplicable because acceptance of a late payment "would unduly interfere with the orderly conduct of business," and the rights of third parties may have intervened.

